

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1998**

SUIT NO: 115/93

BETWEEN

**MICHAEL'S ELECTRICAL AND BUILDING
CONTRACTORS LIMITED**

PLAINTIFF

AND

**(1) WINTECH LIMITED
(2) FRANCIS CYRILLIEN**

DEFENDANT

1998: October 1

Appearances:

Mr St Clair for the Plaintiff, Ms Julie with him
Mr T D Chong for the Defendants

JUDGMENT

Mitchell J.

This is a case of a road traffic accident that occurred in 1992 involving a cow and two vehicles. The testimony of the Plaintiff's witnesses is that the wife of its Managing Director was driving the Plaintiff's vehicle up the Castries-Gros Islet highway at about 5:15 pm on 1st May, 1992 when she paused to let a cow cross the road in front of her from her right hand side to her left hand side. The 2nd Defendant driving the 1st Defendant's pick-up approached the spot at speed from the opposite direction. He collided with the cow on his side of the road. The force of the collision tossed the cow onto the front right bonnet and side, of the Plaintiff's stationary car with such force that it severely damaged the vehicle which subsequently had to be written off. The vehicle had been purchased three weeks before the accident for some EC\$36,000.00, and the wreck was

salvaged for EC\$16,000.00, to a total loss of some EC\$20,000.00. The Plaintiff brought, in addition to its Managing Director John Michel to prove ownership, his wife Doreen Michel the driver of the vehicle, and her sister Claudia Hart who was a passenger in the vehicle at the time of the accident.

The Defendant's case was that the cow came suddenly from the left side of the road and collided with the side of the Defendant's vehicle. It then continued running across the road where it collided with the Plaintiff's approaching vehicle. The 2nd Defendant brought his passenger as a witness. Her testimony was that she saw the cow when it collided with the Defendant's vehicle, but that she ducked her head at that point and saw nothing further. The 2nd Defendant testified that the accident was caused by the sudden springing of the cow, onto the road from the bushes, on the side of the road, and not by any carelessness or speed on his part.

The outcome of the case hinged on which story I believed, the Plaintiff's or the Defendant's. After listening to, and seeing the witnesses I had no difficulty in believing the evidence of the Plaintiff's witnesses over the Defendant's witnesses. I do not believe the 2nd Defendant, that he was only driving at 30-35 mph, and that he was not speeding. I do not believe his evidence that after the collision with his vehicle the cow continued running across the road and collided with the Plaintiff's car. I believe the evidence of the two witnesses for the Plaintiff that after he collided with the cow, the cow was tossed through the air for a distance of some twenty five feet, and that its body crashed into the front and side of the Plaintiff's vehicle. I do not believe his evidence that the Plaintiff's vehicle was moving at the time it was struck by the cow's body. I believe that the accident was caused principally by the excessive speed of the 2nd Defendant. I accept that it is common knowledge that there are cows pastured in that area, that with a little care straying animals can be seen by drivers on the road, and that the

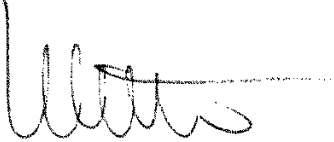
Defendant did not take appropriate care on this occasion. I am satisfied that it was reasonably foreseeable that if a heavy vehicle such as a pick-up speeds along the highway and strikes an animal such as a cow, the body of the animal is likely to be flung into the air and strike another user of the road or a bystander.

The Plaintiff's Managing Director attempted to tender various exhibits relating to the special damages that the Plaintiff had claimed. The amount claimed in the Writ was EC\$20,866.00. The witness could not remember the exact amount. The witness could only remember that the amount of the loss was "some \$20,000.00." This case had been set down for hearing since May 1993 without any discovery or directions of any sort. I had earlier given general directions that in all cases to be tried by me in St Lucia after 21st September 1998, all documentary exhibits to be tendered by a witness should be copied and delivered to counsel at the commencement of the trial if such had not been done before. No exhibits that could have been so exchanged would be allowed to be put in evidence "in ambush," so to say. Such a practice is contrary to the rules governing the conduct of the trial of a case, and causes unnecessary disruption and delay. The Plaintiff in this case had not previously shown the exhibits to the Defendant, did not attend the trial with the appropriate copies, only the originals for tendering through the witness. The Defendant's counsel confirming that he had not seen them previously, I did not allow the Plaintiff's exhibits to be put in evidence.

As a consequence, at the conclusion of the case Counsel for the Defendant submitted that special damages had not been proved. However, the Plaintiff's testimony as to the amount of the loss was not seriously disputed either on the pleadings, or at the trial. I have no reason to doubt the truthfulness of the Plaintiff's Managing Director as to the amount of the

loss. I give judgment for the Plaintiff for the amount of EC\$20,000.00 as special damages, and general damages of EC\$5,000.00. I make no award as to interest prior to Judgment, as no justification was produced for such a claim. Costs to the Plaintiff to be taxed if not agreed.

In conclusion, I am grateful to Counsel on both sides for their written submissions and copies of the authorities on the law of negligence.



ID Mitchell
High Court Judge (Ag)